IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

FRIDAY, THE 15TH DECEMBER 2006 / 24TH AGRAHAYANA 1928

WP(C).No. 27174 of 2006(I)

PETITIONER:

ANILKUMAR N.S., S/O.SEKHARAN,
42 YEARS OF AGE RESIDING AT ARUNODHAYAM,
NEDIYEDATH, NANATHALA, CHAVAKKAD,
THRISSUR.

BY ADV. SRI.P.PAULOCHAN ANTONY
SRI.MANUEL KACHIRAMATTAM
SRI.NISHIN GEORGE VIJAYABABU

RESPONDENTS:
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1. THE STATE OF KERALA,
REP. BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF ELECTRICITY.

2. THE KERALA STATE ELECTRICITY BOARD,
REP. BY ITS SECRETARY,
VAIDHUTHI BHAVAN, THIRUVANANTHAPURAM.

3. THE KERALA PUBLIC SERVICE COMMISSION,
REP. BY ITS SECRETARY,
PATTOM, THIRUVANANTHAPURAM.

R1 BY GOVT. PLEADER SHRI. BIJOY CHANDRAN
R2 BY SC SHRI. K.S.ANIL
R3 BY SC SHRI. P.C.SASIDHARAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J.

WP(C)No. 27174 OF 2006

Dated this the 15th December, 2006.

JUDGMENT

The petitioner applied for the post of Assistant Engineer (Electrical) in the Kerala State Electricity Board pursuant to notification issued by the third respondent. A written test was conducted by the Commission. The petitioner appeared for the written test. Short listing of candidates was done and the list was published on 5.7.2005 (Ext.P3). The main list contains 96 candidates and the supplementary list 126 candidates. Thereafter the candidates included in the short list were called for interview. The Commission published the final rank list on 13.1.2006. The petitioner was not included in the short list, and consequently, his name did not appear in the rank list also. He filed this writ petition on 12.10.2006 contending that the Commission had committed illegality in fixing a cut off mark for preparing the short list as also for the final rank list.

2. Reliefs prayed for in this writ petition are: (i) to quash Ext.P3 notification issued by the third respondent, (ii) for a direction to the third respondent Commission to consider the existing and the anticipated vacancies in the post of Assistant Engineer (Electrical)

and to prepare a list in the order of merit without fixing cut off marks, (iii) for a direction to the Commission to advice candidates only on the basis of an additional list to be prepared and (iv) for a declaration that the fixing of cut off marks at 50 as per Ext.P3 is illegal and arbitrary.

3. The third respondent Commission has filed a counter affidavit. In paragraph 4 of the counter affidavit the allegation that cut off mark was fixed in contravention of the settled principles of law has been denied. According to the Commission the cut off marks referred to in Ext.P3 is the marks scored by the candidate who was included as the last person in the list. It is not as though the Commission fixed a cut off mark and thereafter prepared a short list. The Commission had to take into account the number of vacancies till then reported and to assess the reasonable number of persons to be included in the short list. This was done taking into account the number of candidates applied, the number of vacancies reported and the number of persons to be called for interview. It is further submitted that the petitioner whose register number was not included in Ext.P3 short list published on 5.7.2005 did not choose to challenge the same within a reasonable time. Subsequently the main list was published on

13.1.2006. The final rank list also was not challenged within a reasonable time. He has chosen to approach this Court after the lapse of ten months from the date of publication of the final rank list. In the meantime the Commission had started advising candidates from the list. The present position is that the main list has exhausted. In the light of the judgment of the apex Court, the supplementary list has automatically ceased to be in force.

4. Having considered the rival submissions, I feel that the petitioner cannot be granted the reliefs prayed for. It is to be taken note of that the petitioner has not challenged Ext.P3 short list within a reasonable time. None included in that list is a party to this writ petition. No relief can be granted to the petitioner behind the back of those who were included in Ext.P3. On that ground alone this writ petition is liable to be dismissed. I find substance in the contention of the Commission that the minimum mark of 50 was stipulated not as a cut off mark but taking into consideration the lowest mark secured by the candidate who was included in the short list having regard to the number of vacancies reported and the number of persons who can be called for interview. The fact that the petitioner did not challenge the impugned action or the final rank list within a reasonable time is

also a significant point in favour of the respondents. In matters of this nature where intervening rights of others who have applied for the same post are involved, any person who sleeps over his right and thinks that he can challenge the action whenever he wants to do so according to his whims and fancies will not be granted reliefs by this Court in the exercise of the discretionary jurisdiction under Art.226 of the Constitution of India. For the above reasons, the writ petition must fail. Hence it is dismissed.

K.K.DENESAN
Judge

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